

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Veloso v. Elshazly*,
2026 BCSC 983

Date: 20260529
Docket: M208083
Registry: Vancouver

Between:

Joanna Veloso

Plaintiff

And:

Mohamed Ibrahim Elshazly

Defendant

Before: The Honourable Justice Marzari

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.
March 2-6 and 9-13, 2026

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INTRODUCTION

[1] Joanna Veloso seeks compensation in damages arising from a motor vehicle accident on September 5, 2018, at the intersection of South West Marine Drive and Ontario Street in Vancouver, BC, when a motor vehicle owned and driven by the defendant Mr. Elshazly rear-ended her vehicle (the "Accident"). Liability is admitted.

[2] It is not contested that Ms. Veloso was injured in the Accident and took several weeks off work as an airport screening officer at the Vancouver International Airport. However, the extent and cause of Ms. Veloso's injuries beyond the first one to two years post-Accident were very much at issue in the trial, with Ms. Veloso claiming that she can no longer work full-time as a result of the Accident, and the defendant arguing that Ms. Veloso's injuries had resolved by mid-2020 at the latest. Also at issue at trial was the impact, if any, of Ms. Veloso's pre-existing mental and physical health conditions on her losses, and whether there was a further intervening event at work that broke the chain of causation after 2023.

[3] I will therefore address the following issues in these reasons:

- a) What mental and physical injuries did Ms. Veloso suffer after the Accident, and what injuries and functional limitations does she currently suffer from?
- b) Were those injuries caused by the Accident, including:
 - i. Were any of those injuries pre-existing, and might they have arisen or become disabling regardless of the Accident?
 - ii. Are Ms. Veloso's current injuries caused by an intervening event at work arising in or about 2023?
- c) What is an appropriate award for non-pecuniary damages in these circumstances?
- d) What is an appropriate award for pre-trial loss of earnings?

- e) Is Ms. Veloso entitled to an award for future loss of earning capacity and, if so, on what basis and in what amount?
- f) Is Ms. Veloso entitled to an award for the costs of her future care and, if so, in what amount?

[4] In order to resolve the above issues, I must also assess the credibility and reliability of the parties and witnesses that participated in this trial, and the helpfulness of and the weight to be given to the expert opinion I received.

BRIEF CONCLUSION

[5] I find that Ms. Veloso was injured as a result of the Accident, leading to both soft-tissue injuries to her upper, mid and low back, and injury to a nerve root leading to recurring, radiating, and sometimes debilitating right leg and hip pain that continues to date (the “radicular pain”).

[6] Ms. Veloso’s back and right leg pain has led to a chronic pain condition involving the central sensitization of her nervous system, which is disabling and prevents Ms. Veloso from fulfilling the required functions of a full-time screening officer at the airport. It does not prevent her from performing the advocacy and recording work she performed as Recording Secretary for her union, which work she was able to maintain in an elected position until the end of 2025, but is no longer available to her as she was not successful in the last union election for this position.

[7] In terms of her mental health, I am satisfied that Ms. Veloso has suffered from depression, which was not caused by the Accident, and significant anxiety symptoms that are centred on her experience of chronic pain and the avoidance of pain.

[8] I am not satisfied that either Ms. Veloso’s pre-existing mental health or physical conditions are the cause of her current disability, or that they are or were likely to lead to disability independent of the negligence of the defendant. Ms.

Veloso's independently arising depression made her more vulnerable to her chronic pain condition but did not cause that condition.

[9] Nor am I satisfied on the evidence before me that the incidents of bullying and harassment Ms. Veloso experienced at work beginning in 2023 and continuing through 2024 were an intervening event that broke the chain of causation with respect to Ms. Veloso's disability. Even had that event not occurred, I find that Ms. Veloso would still have required medical leave in relation to her chronic pain, and in particular a flare up of her right-sided radicular pain in 2024. Although the bullying and harassment no doubt made working more difficult, it is not the reason that Ms. Veloso was and remains unable to sustainably continue her work as a full-time screening officer.

[10] Ms. Veloso is entitled to damages for non-pecuniary loss, and past and future loss of earning capacity for the full extent of her current Accident-related injuries.

CREDIBILITY AND RELIABILITY

[11] The well-established test for assessing credibility was summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013). Relevant factors include the firmness of the witness's memory, the ability of the witness to resist the influence of interest in modifying their recollection, whether the witness's evidence harmonizes with independent evidence that has been accepted, whether the witness changes their evidence during direct examination and cross-examination (or between examination for discovery and trial) or is otherwise inconsistent in their recollections, the witness's demeanor, and whether the witness's evidence seems generally unreasonable, impossible, or unlikely.

[12] Credibility and reliability are distinct concepts. "Credibility relates to honesty and the willingness to speak truthfully, whereas reliability relates to a party's ability to accurately observe, recall and recount the events in issue": *Mand v. Cheema*, 2024 BCSC 1701 at para. 25.

[13] The defendant does not challenge Ms. Veloso's credibility in terms of the honesty of her testimony. However, the defendant says that the reliability of the plaintiff's testimony is questionable, which they say is demonstrated by inconsistencies between her evidence at trial, in discovery, and in the accounts provided to others including medical treaters.

[14] The defendant seeks to rely on hearsay statements in Ms. Veloso's counselling records if the statement amounts to an admission against interest, including when the statement has been put to Ms. Veloso and she has not adopted it as true or as her own statement. Furthermore, they argue that even if a hearsay statement (or summary of a hearsay statement) attributed to Ms. Veloso recorded in her counselling or physical therapy records was not put to Ms. Veloso, it is nevertheless admissible not just for the fact that the statement was made, but also for the truth of its contents against her. This was a theme throughout the defendant's cross-examination of Ms. Veloso and other witnesses, for example putting to other witnesses highly personal information gleaned from counselling records not put to or adopted by Ms. Veloso. It is largely on the basis of such statements that the defendant challenges Ms. Veloso's reliability.

[15] The British Columbia Court of Appeal squarely dealt with this issue in *Egan v. Andrychuk*, 2022 BCCA 110. Generally "where a clinical record contains statements that the clinician attributes to a patient, without more, those aspects of the clinical record are admissible only as evidence that the statement was made to the clinician and not as evidence of the truth of the patient's underlying statement" (at para. 51). In addition, where the patient is a party to the litigation, the party-admissions rule applies, and the statements may be admitted for the truth of their contents (at para. 53). However, in most cases party-admissions will also amount to prior inconsistent statements, such that s. 14 of the *Evidence Act*, R.S.B.C. 1996, c. 124 applies: *Firman v. Asadi*, 2018 BCSC 2437 at para. 33; *Egan* at paras. 54–55. This provision, requiring the statement be put to the witness, provides the "procedural prerequisites" to admitting any prior inconsistent statement on the basis that "any witness should be given an opportunity to admit or explain the prior inconsistent statement such that

it might have a minimal impact on their credibility”: *Egan* at para. 54; *A.J.L. v. J.C.*, 2023 BCSC 664 at para. 329.

[16] As such, I find that those statements relied upon by the defendants in the counselling and clinical records for the truth of their contents said to be inconsistent with her evidence or position, but not put to Ms. Veloso, cannot be used for the truth of their contents or for credibility purposes because the procedural pre-requisite under s. 14 of the *Evidence Act* were not met. As for any statements that were put to Ms. Veloso but not adopted by her as accurately recorded, it remains open to myself, as the trier of fact, to accept the truth of the recorded statement, or to “reject the reliability of any portion of the notes either as evidence *that* a statement was made” or “to reject that the statement reflected the truth”: *Egan* at para. 59.

[17] To this legal analysis, I would add the contents of the document agreement entered into by the parties in this trial, which recognizes the law on business records and clinical records generally, but includes the following proviso:

10. Statements within the records which are not from the direct observation of the record maker are admissible only for the purpose that the statement was made and recorded.

[18] There were several instances when Ms. Veloso was confronted with statements recorded in her counselling or therapeutic records in cross-examination. She rarely denied making the statements, but would often provide further context for them. When Ms. Veloso was given the opportunity to address aspects of the counselling or physiotherapy records in cross-examination, I generally accepted her sworn evidence as credible and reliable.

[19] The defendant also relies on statements of Ms. Veloso in her direct examination, which they say are inconsistent with her actual health history, particularly in relation to several years before the Accident before she underwent bariatric surgery to address her previous obesity condition. I am satisfied that those prior health issues primarily related to her obesity condition and were largely resolved by the surgery she underwent in 2015, several years before the Accident.

[20] Overall, I found Ms. Veloso both credible and reliable on relevant matters. I accept the sincerity of her evidence and her strong work ethic. She was a good patient and adhered to therapeutic recommendation. My impression is that she was also eager to please and at times overly optimistic in her reports to her kinesiologist in particular. While I had some concerns with respect to the completeness of her evidence on some matters, those matters were largely tangential to the issues before the Court.

[21] I also found the plaintiff's witnesses to be helpful and largely credible and reliable, fairly stating the limitations of their evidence when such limitations were present. Her now ex-husband also gave evidence, in a situation which provides no benefit to himself. In addition, union supervisors and other persons not closely connected to Ms. Veloso provided fair and neutral evidence of their observations of Ms. Veloso. I put much more weight on their direct observations than on their lay opinions on the source of Ms. Veloso's discomfort.

[22] The defendant also gave evidence in which he described rear-ending her vehicle. I accept this evidence. His evidence about seeing Ms. Veloso at work in the months following the Accident where he was a supervisor provides some glimpses of her overall function during that time, but his source of information into her accommodations was limited, and I find does not detract from the whole of the plaintiff's evidence in this case.

FACTUAL FINDINGS

[23] It is helpful to set out my factual findings regarding various events leading up to and following the Accident.

Background

[24] Ms. Veloso was 33 years old at the time of the Accident and is now 41 years old, having been born in December 1984. She was born in Vancouver to a family of Chilean immigrants, and she currently lives in Vancouver with her fiancé and his son.

[25] In high school, Ms. Veloso was social, with a wide group of friends, and played soccer on the high school team. Academics were harder for her, however, and it was not until after she graduated from high school that she learned that she has dyslexia. Nevertheless, she pursued post-secondary studies at Langara, though she did not maintain a full-time load.

[26] Ms. Veloso was active in her twenties, “living the life”, going out dancing and spending time with friends. She travelled to South America and met her now ex-husband, Mr. Valle-Arce, while volunteering in Chile, and they backpacked through Argentina together.

[27] In 2009 she married Mr. Valle-Arce in Canada, and she continued her studies, with a goal then to become a paralegal, though she struggled with her English grades. Her marriage was a more traditional one, in that she was almost entirely responsible for shopping, cooking and cleaning in the home, though she also worked full-time. I accept her evidence that she would maintain their home to a high standard, engaging in deep cleaning of carpets, baseboards and curtains on a regular basis.

[28] In 2011 she began working as a screening officer at the Vancouver airport. As a screening officer, Ms. Veloso is a member of the International Association of Machinists and Aerospace Workers (the “Union”). Starting in 2017 she became a shop steward for the Union.

[29] The evidence establishes that screening officers rotate through multiple physically demanding positions while working which generally require prolonged standing through most of their eight to 10-hour shifts, though they also rotate through a seated station when they review X-ray scans of luggage.

[30] In 2013 Ms. Veloso struggled with morbid obesity, which caused problems with low back pain, migraines, and plantar fasciitis. She received medical notes supporting some work accommodations related to her low back pain and plantar fasciitis. In 2015 Ms. Veloso had bariatric surgery, coupled with weight loss counselling involving cognitive behavioural therapy. She lost 100 pounds by mid-

2016, returning to her more regular weight. I find that this surgery and weight loss fully addressed the reasons for the pre-surgery medical notes.

[31] Between mid-2016 and the Accident in September 2018, Ms. Veloso returned to her ordinary active lifestyle, including playing soccer with a women's league, going for frequent hikes, going out dancing with friends and attending gym classes. In 2016 she backpacked again with her husband in South America, hiking to Machu Pichu and visiting Peru and Chile.

[32] However, she struggled to become pregnant (one of the reasons for her efforts at weight loss and her bariatric surgery) and experienced two miscarriages, one in late 2017 and another in January 2018, less than a year prior to the Accident. As a result of the miscarriages, she suffered from an episode of depression during which she was prescribed four weeks of anti-anxiety medication and for which she took about one week off work. She was also regularly seeing a counsellor at this time, primarily focused on her struggles with fertility and her marriage. In March 2018, she travelled to Thailand, which she found greatly restorative.

[33] I find that she was fully recovered from this situational depression well before the Accident in September 2018. She did continue to see a counsellor off and on for several years for ongoing life stressors. Despite the defendant's effort to make much of the life stressors recounted to her counsellors in her counselling records, (other than her struggles with fertility and the workplace bullying she later endured, which are fully addressed by her evidence) I do not consider that these stressors were significantly different from the ups and downs one might find in anyone's life if one were to dig into their personal life by reading their counselling records.

[34] In the year prior to the Accident, Ms. Veloso worked full-time. However, a review of her paystubs indicates that this was not consistently 40 hours/week 52 weeks/year, and that she took holidays, and traded some shifts. It was not put to her in cross-examination that she worked less than full-time in the year prior to the Accident, and so I am not aware of the reason for the absences apparent on her paystubs for that year. Other than one to two weeks taken as a result of the two

miscarriages in that year, there is no evidence that Ms. Veloso missed any significant amount of work in the two years prior to the Accident due to injury or illness, or other mental or physical conditions.

The Accident

[35] Ms. Veloso was driving home from work at the airport when the Accident occurred in the mid-afternoon of September 5, 2018. Both Ms. Veloso and Mr. Elshazly testified to the circumstances.

[36] Based on the whole of the evidence, I find that Ms. Veloso was at a complete stop at a red light eastbound on South West Marine Drive just prior to the Accident. Mr. Elshazly was also driving eastbound. He was not stopped at the red light, and had not slowed for it, believing that the traffic stopped for that light would clear before he got there. However, when he realized that Ms. Veloso's vehicle had not yet started to move, he braked for one to two seconds before impact.

[37] Mr. Elshazly believed he had been driving at about 30 km/hr because traffic was not moving quickly, and that he would have slowed prior to impact due to his application of the brakes shortly before impact. Ms. Veloso felt the impact and described it as feeling like Mr. Elshazly was going full speed into the rear of her vehicle. Nothing turns on Mr. Elshazly's actual speed or how much he may have been able to slow down by braking in the one to two seconds before impact. I find that the impact was a very forceful one, and damaged both vehicles.

[38] I find that Ms. Veloso experienced shock immediately after the Accident. However, after taking a moment to process what had occurred, she was able to get out of her vehicle and speak with Mr. Elshazly, who she recognized as a supervisor at work. Ms. Veloso's vehicle was still operational, and she drove herself home soon after.

Post-Accident

[39] The evidence showed that Ms. Veloso experienced immediate shock and stiffness at the scene of the Accident. She felt pain later that day, and she took an

Epsom Salt bath and rotated between a heat pack and an ice pack for pain relief later that day. That evening, she experienced soreness, tightness, numbness, and tingling, with her right side worse than her left. She was unable to sleep comfortably due to pain in her neck, shoulders, mid-back, lower-back, and hips, particularly the right hip.

[40] Ms. Veloso took time off of work. Although she could not remember precisely how much time she took off work, her pay stubs indicate that she was off work for approximately five weeks.

[41] She went to a walk-in clinic two days after the Accident and was diagnosed with acute neck and back strain and physiotherapy and massage therapy was recommended. When she went to see her family doctor later that month she was also referred to physiotherapy.

[42] In the three weeks following the Accident, I find that her symptoms worsened. She experienced pain in her neck, tension, stiffness, and tightness in her shoulders into her trapezius muscles. It was difficult for her to move. She experienced cramping, muscle spasms in her low back, tingling into her hip, and what she described as “sciatica” starting from her right hip, radiating to the middle of her right glute and shooting down her right leg. She stayed home for a month in pain “all day every day.”

[43] Ms. Veloso’s neck, shoulders and mid-back have been tight and sore since then. Her low back is the greater source of her chronic pain, where the pain is more intense and constant.

[44] By October 2018, Ms. Veloso began seeing Mr. Ngo, her physiotherapist, who treated her approximately twice per week for two months, then an average of once per week for over four years. In March 2024 she resumed near weekly physiotherapy with other practitioners up until September 2025, after which her appointments became more intermittent. She also began massage therapy, though there was little to be done initially due to her muscle inflammation. Following a

month of weekly appointments in September 2018, she had intermittent appointments until June 2019, at which time she began to have regular monthly massage appointments through August 2024.

[45] In addition to some prescribed medications for pain, Ms. Veloso also increased her use of cannabis to help her sleep. In 2019 she was referred to a pain clinic, and she has been treated for her chronic pain with a variety of modalities and medications since the Accident.

[46] Initially, Ms. Veloso's mother did the cooking and cleaning, or they would order in food. Mr. Valle-Arce agreed domestic work was not his forte.

[47] Ms. Veloso gradually returned to work on modified duties with reduced hours and limited positions which restricted her from positions in which she would have to bend or lift. Her first day back was in the pay period ending October 13, 2018. By the end of 2018, Ms. Veloso was working approximately 30 hours per week.

[48] After that initial post-Accident period, Ms. Veloso continued to obtain medically-based accommodations at work, allowing her to work four eight-hour shifts per week with a full day off between two work days (instead of the normally required five eight-hour shifts or four 10-hour shifts) to allow her to rest and recover from her shifts. Her approved accommodations also strictly enforced policy that already existed entitling her to rotate from one security position to another every 30 minutes. Her pay stubs indicate that she continued to fall well-short of full-time employment. In order to obtain these accommodations, she would see her doctor every six weeks for a medical evaluation on her ability to work a full 40-hour week.

[49] Even with these accommodations, I find Ms. Veloso would be in pain during and after a work shift, and she relied on her non-working days to recover. She also worked hard to recover her strength and endurance through therapy and targeted exercise, attending physiotherapy, massage therapy and kinesiology, and going on regular walks and light hikes, though of much lower intensity and duration than she had engaged in prior to the Accident.

[50] The evidence establishes that from the outset she experienced a shooting pain down her right leg that was temporarily alleviated by targeted treatment to that area in physiotherapy provided by Samuel Ngo. Mr. Ngo testified that he treated Ms. Veloso regularly for this condition from the outset of his treatment of her in 2018 though to 2023.

[51] In 2020 Ms. Veloso suffered another miscarriage. She suffered another bout of depression at this time associated with that loss and received treatment for that. The psychiatric experts before me differ in their interpretation as to Ms. Veloso's clinical notes at this time, as to whether she was diagnosed with long-term depression that waxes and wanes and goes into remission, or whether she has experienced periods of situational depression associated primarily with her fertility struggles. Nothing turns on this difference, as both psychiatrists agree that Ms. Veloso's depression was not caused by the Accident, regardless of whether it is characterized as situational, or longer term but currently in remission.

[52] By mid-2020, the plaintiff's clinical records noted she was hiking again. Although those records include a reference to her doing an intense hike referred to as the Coquitlam Crunch, I find that reference is in error, as neither Ms. Veloso, the friends who she walked or hiked with regularly, or her ex-husband who I found to be entirely credible and reliable without more subtle influences of favour or ongoing friendship, recall Ms. Veloso participating in this. Mr. Valle-Arce's evidence is the most reliable in this regard, and he testified that they always hiked together and that he was not familiar with this hike. I find it probable that in speaking to her kinesiologist, Ms. Veloso would refer to aspirational goals that were recorded in those notes, but that were not always accomplished.

[53] Beginning in 2020, Ms. Veloso was also able to reduce some of her time "on the floor" by engaging in Union work. She was elected as a trustee of the Union in 2019 and was acclaimed as the Union's Recording Secretary in 2020. This position with the Union allowed her to work up to two days per week (or half her time) in a

more flexible and less physically demanding role, including being able to work from home on office projects.

[54] Until the end of 2021, Ms. Veloso continued to receive accommodations at work and to work reduced hours of 32–36 hours a week. She also used her sick time and vacation time, and gave away shifts, to manage her pain and take more time off work. Her co-workers were aware that she experienced back pain and would help with lifting luggage or relieving her from a position when they could.

[55] At the end of 2021, Ms. Veloso was still experiencing pain between her shoulder blades, mid-back, and low back, with radiating pain into her right hip and right gluteal region. Her trapezius muscles flared when she searched bags while performing her duties as a screening officer. After work, she would mostly lie on the couch to recover from her workday and was not able to contribute to housework or cooking on those days.

[56] Because of her chronic pain, and her anxiety about what might flare up that pain, Ms. Veloso was less active socially during this period. Her marriage also suffered due to many factors, but one of those factors, I find, was marital tension over the division of labour in the home, which Ms. Veloso's physical limitations exacerbated.

[57] Ms. Veloso divorced Mr. Valle-Arce in January 2022, and she moved in with her mother.

[58] After her divorce, I accept that Ms. Veloso felt she had no choice but to increase her work hours to support herself. The physical demands of full-time work as a screening officer were eased, however, because two of those workdays could be spent doing Union work rather than working on the airport floor screening passengers and their luggage.

[59] Even then, her evidence and paystubs establish that she maximized her sick time and gave away shifts to help her manage her pain. I accept her evidence that working more hours, particularly as a screening officer (as opposed to her Union

work) increased her experience of pain and reduced her ability to recover from that pain when not at work.

[60] In 2023, Ms. Veloso's current partner, Mr. Chia, moved in with her. Mr. Chia managed the grocery shopping, heavier housework and most of the cooking because Ms. Veloso was unable to. He also is an airport screener and understands the physical demands of her work.

[61] Also, in or around mid-2023, Ms. Veloso stopped attending kinesiology and physiotherapy. I accept that this was not because it was not helpful, but because it was more than she could manage while working full-time.

[62] However, after giving up her physiotherapy in 2023, her right-sided radiating pain worsened. In early 2024, her radiating right leg pain became disabling, preventing her from standing for more than one hour at a time, and by April 2024 her doctor recommended she take an extended six-month leave from work. Although the defendant suggests that this leave was sought and medically recommended due to bullying and harassment that Ms. Veloso was experiencing in relation to some Union politics starting in August 2023, I accept the evidence of Ms. Veloso and her family doctor, Dr. Cheung, that the leave was recommended and taken for medical reasons, and specifically disabling pain in her right low back, hip and leg.

[63] During her leave, Ms. Veloso began to think about alternatives to returning to work as a screening officer. She enrolled in Langara College and began full-time studies in September 2024 working towards a diploma in social services.

[64] When she returned to work in October 2024, she only returned to one shift per week. Although Ms. Veloso suggested that if she had been in her pre-Accident strength and condition, she could have managed full-time work and full-time studies, I find it is unlikely that she would have done so. However, I also accept her evidence that the physical demands of her job as a screening officer were no longer sustainable, and that her decision to become qualified as a social service worker was a legitimate effort to mitigate her losses.

[65] Ms. Veloso remained in full-time studies for the 2024/2025 academic year. For the 2025/2026 academic year, Ms. Veloso took only a few courses and worked three six-hour shifts a week, although even this amount caused her pain.

[66] A new security company won the airport screening contract in September 2025, and put Ms. Veloso on leave on the basis that she could not be provided with safe work given her physical limitations, but she successfully grieved that leave on the basis that she could continue to work with her existing accommodations as to shift frequency and duration and limits on how much she was required to lift. Ms. Veloso was also on administrative leave for additional time in the fall of 2025 for unrelated Union matters, during which she did not work as a screening officer but received her pay.

[67] Ms. Veloso was not successful in her most recent bid for re-election to the Union executive, and so at the end of 2025 she lost her ability to satisfy some of her shifts each week by performing Union business. Beginning in January 2026 all of her shifts have been performed on the floor as a screening officer.

Present Time

[68] At the time of trial, Ms. Veloso was working to obtain the last two credits she needs for her social service worker diploma and was continuing to work as a screening officer with three to four six-hour shifts per week, with some additional accommodations.

[69] While she has found these latter courses to be a struggle, largely due to their focus on English and her dyslexia, she is committed to completing them and obtaining her diploma this spring. Her goal is to then pursue a bachelor in social work, that her diploma would count towards, but which would still require another two years of full-time schooling.

[70] Ms. Veloso continues to experience stiffness at the base of her neck, pinching between her trapezius muscles and mid-back, cramping on the right side of her low back radiating into her right hip and glute, with pinching and throbbing sensations.

The radiation has stopped going down the right leg, but she will feel it going down the glute when she first gets up from a sitting position.

[71] Ms. Veloso now conceptualizes herself as someone who lives with chronic pain, and that pain affects nearly all aspects of her life, including how she thinks about herself and her future. She finds it debilitating but believes that it is likely something she will have to deal with for the rest of her life.

[72] Ms. Veloso is extremely anxious about what will cause a flare up of her pain, particularly her disabling right-sided pain which she refers to as “sciatica”. This anxiety dominates her psychiatric profile, though it is diagnosed in different ways by the psychiatric experts before me.

[73] She currently takes medications prescribed by her family doctor for both her physical pain and her mental health.

INJURIES AND FUNCTIONAL LIMITATIONS

[74] Ms. Veloso says that while she experienced some soft tissue injury, and worked hard to recover from that, she has suffered, since the Accident, from chronic pain in her neck and shoulders and mid to low back, with recurring intense shooting pain in her right glute and leg when she overextends herself.

[75] Ms. Veloso says that she has had situational depression (around her miscarriages both before and after the Accident). She also has Generalized Anxiety Disorder (GAD) caused by the Accident and her chronic pain. She either also has Somatic Symptom Disorder (SSD) (as opined by Dr. Lu), or she has entirely justified caution and aversions to activities that exacerbate her chronic pain condition (as opined by Dr. Okorie).

[76] The defendant says that Ms. Veloso only suffered from soft-tissue injuries that she recovered from by mid-2020 when she had returned to close to full-time work and her usual activities. Certainly, by the time she returned to work full-time in 2022, the defendant says she was fully recovered physically.

[77] In terms of mental injuries, the defendant says that Ms. Veloso has chronic and lifelong GAD and Major Depressive Disorder (MDD), which pre-existed the Accident, were not caused by the Accident, and continue to be her predominantly disabling condition.

Determination

[78] The expert medical and psychiatric evidence is fairly consistent that Ms. Veloso initially suffered from soft tissue whiplash-related injuries to her cervical, thoracic and lumbar spine. Ms. Veloso did not recover from these injuries in the ordinary or expected time frame, despite significant therapeutic efforts to do so, and this pain is now chronic and involves central sensitization of her nervous system related to that pain. She also suffers from GAD related to her chronic pain condition, and depression which arose independently from her pain and the Accident, but which complicates her chronic pain and her prognosis.

[79] Both Ms. Veloso's family doctor, Dr. Cheung, and the physiatrist who examined her for the purposes of this litigation, Dr. Shergill, also diagnose her with a nervous system injury to her right side, though they provide different start dates and explanations for this pain.

[80] The only significant difference between the opinions of Dr. Shergill and Dr. Cheung was that Dr. Shergill diagnosed right side radiculopathy, or nerve root compression, going back to several weeks after the Accident based on extensive physiotherapy findings over several years beginning in October 2018, whereas Dr. Cheung's first charting of nerve based pain was not until March 2024.

[81] I found Dr. Shergill's report and opinion to be particularly thorough and based in specialized knowledge about nervous system injuries and their diagnosis. His familiarity with Ms. Veloso's clinical records as a whole (including those not specifically mentioned in his report but put to him in cross-examination) was comprehensive. I accept his diagnosis of the plaintiff's physical injuries where they differ from Dr. Cheung's.

[82] Dr. Shergill diagnosed Ms. Veloso with the following injuries and conditions related to the Accident:

1. Cervical spine sprain/strain (Whiplash Associated Disorder (WAD) Grade II)
 - a. Chronic ongoing myofascial neck/upper back pain
2. Thoracic spine sprain/strain (Grade II)
 - a. Chronic ongoing myofascial mid back/periscapular pain
3. Lumbar spine sprain/strain (Grade III)
 - a. Chronic ongoing multifactorial pain with contributions from:
 1. Likely right S1 radiculopathy – resulting in right lower extremity pain and sensory disturbance secondary to likely L5-S1 intervertebral disc injury
 2. Likely bilateral L5-S1 facet mediated mechanical low back pain
 3. Myofascial low back pain
4. Central sensitization

[83] Dr. Shergill explains central sensitization as follows:

After uncomplicated cervical, thoracic, and lumbar sprain/strain injury, and after following a physical rehabilitation program, often patients will have resolution of their symptoms. A large risk factor for prolonged symptoms afterwards, is ongoing anxiety which contributes to the phenomenon of central sensitization. In central sensitization, there is upregulation of the spinal cord and the brain such that there is less descending inhibition on the pain pathways. This phenomenon is well studied in chronic pain literature. In these conditions, patients can feel anxious to move, which can lead to deconditioning, which in turn can lead to additional chronic pain. This forms a vicious cycle of pain that needs to be aggressively treated with a multimodal and interdisciplinary treatment approach.

[84] Dr. Lu, a psychiatrist who is also very familiar with chronic pain and its treatment, also diagnosed Ms. Veloso with central sensitization, which he was careful to explain was not a psychiatric disorder but a physical one related to the neurological and hormonal system and the pain signals received by the brain.

[85] In terms of Ms. Veloso's mental health injuries, both Dr. Lu (who was called by the plaintiff) and Dr. Okorie (who was called by the defendant) agree that Ms.

Veloso suffers from GAD, and from chronic pain that exacerbates her mental health condition.

[86] Dr. Lu provided the following diagnoses of Ms. Veloso:

- a) Chronic pain, including central sensitization;
- b) Somatic Symptom Disorder with predominant pain symptoms, under which her anxiety symptoms are subsumed; and
- c) Major Depressive Disorder related to her pregnancy losses and her other biopsychosocial stressors.

[87] He explained Ms. Veloso's SSD as follows:

... She is intensely preoccupied with her pain and pain-related symptoms and limitations. She has the classic psychological responses of fear and avoidance associated with her chronic pain and cognitive symptoms. In keeping with SSD, she has anxiety about her health, pain, and future capacity. Typical of SSD, Ms. Veloso has an underlying medical condition with her physical pain. At the same time, she has prominent mood and anxiety symptoms as part of her responses to her pain. Similar to depression, a patient with SSD perceives her daily facets from the perspective of negative expectations of physical pain. Her limitations and physical functional disability are adversely coloured by her SSD, leading to persistent distress about her pain. Her preoccupation with her pain is the hallmark of SSD. Her SSD reinforces her fear and avoidance. Once reactivated, her SSD has become self-perpetuating due to the selective focus on her physical symptoms and distress. SSD captures the interaction between chronic pain and psychiatric symptoms and functions. The fact that she cannot meet the physical demands of her job plays a major role in her SSD. Ms. Veloso's SSD accounts for some of her anxiety and depressive symptoms.

[88] Although, in his opinion, Ms. Veloso's MDD was not caused by the Accident or her chronic pain, it does interact with and is exacerbated by her pain and her SSD. Dr. Lu explains this interaction as follows:

... Ms. Veloso's major depression and her SSD would have been mutually aggravating. Collectively, her major depression, SSD, and chronic pain would have contributed to her symptoms of sleep disruptions, loss of energy, and poor attention and concentration. Pain pathways are linked to anxiety and mood. There are symptom overlaps between pain, SSD, and major depression. These are general, non-specific overlapping symptoms. The overlap between these conditions is well-recognized. All three conditions

contributed to her relative disability. She also has prominent anxiety features. Due to her SSD and major depression, the additional diagnosis of anxiety disorder is not necessary, as anxiety is often a core clinical feature of SSD and major depression. Her self-rated depression, anxiety, and health-related distress are elevated. These are clinical markers of moderately severe SSD.

[89] Dr. Okorie diagnosed Ms. Veloso with Major Depressive Disorder in remission, and Generalized Anxiety Disorder, in partial remission. He disagreed that Ms. Veloso was suffering from SSD because, in his view, Ms. Veloso's extensive therapeutic treatments, preoccupation with her chronic pain and her self-imposed limitations for fear of triggering that pain is not an overreaction, but an appropriate response to her chronic pain condition. However, he agrees that Ms. Veloso's anxiety disorder is driven by her chronic pain and her anxiety about what may exacerbate it. He agrees with Dr. Lu that chronic pain negatively affects mental health and mental health affects chronic pain.

[90] Both psychiatric experts consider that Ms. Veloso's depression either is not currently active or is in remission and is not a current driver of her disability. I accept this evidence.

[91] Based on the whole of the evidence before me, including the expert evidence, I find that Ms. Veloso is currently suffering from the following physical and mental injuries:

- a) Chronic myofascial pain in her neck, upper-back, and mid-back periscapular region and low back;
- b) Lumbar back pain with contributions from the myofascial pain noted above, but also an intervertebral disc injury at her L5-S1 with mechanical low back pain associated with this as well as right S1 radiculopathy resulting in right leg pain; and
- c) Central sensitization related to her chronic pain.

[92] I find that since the Accident, Ms. Veloso has experienced pain related to the above conditions, though her right sided radicular lower hip, buttock and leg pain

has been well managed at times (particularly with the aid of regular physiotherapy targeting this area) but highly disabling at others, most notably in 2024 and 2025 when she had ceased receiving weekly physiotherapy treatments.

[93] I find that she has also experienced GAD that is associated with her fear of exacerbating her pain which results in her being hyper-sensitive to situations that may exacerbate her chronic pain and her right radicular pain in particular, and avoidant of situations and activities because of that anxiety. I find that this has led her to greater social isolation, all of which supports Dr. Lu's diagnosis of SSD. Therefore, Ms. Veloso's GAD may be subsumed under a diagnosis of SSD. For my legal purposes, I see little difference between this and Dr. Okorie's opinion that her anxiety and behaviours related to her chronic pain do not indicate a formal diagnosis of SSD because they are an entirely reasonable reaction to her pain. Both diagnoses indicate a disabling anxiety and chronic pain related psychological injury that is resistant to resolution and with a poor prognosis for recovery.

[94] I find that she has suffered depression at times, both before and after the Accident, largely associated with her miscarriages, but that her depression is not currently a significant factor in her disability.

[95] With respect to Ms. Veloso's functional capacity as an airport screening officer, Ms. Veloso was evaluated by Ms. Waithman, who has extensive experience in functional capacity evaluations, and with the physical requirements of airport screeners in particular. Ms. Waithman opines that, based on her testing, Ms. Veloso does not meet the functional physical requirements of an airport screening officer, in that her ability to do this work is not durable, and that she will always need accommodations. Even with current accommodations providing for shorter shifts, weight restrictions on what she is required to lift, and regular rotation through positions, the demands of an airport screening officer do and will continue to aggravate her pain to a disabling extent. Specifically, she opines:

Assessment findings indicate that Ms. Veloso does not fully meet the physical factor demands for working as an airport screening officer. She is limited from the full range of standing and walking demands, as she is limited to standing

for up to approximately 30 minutes at a time, and to static standing for up to approximately 10 minutes at a time. She is limited from the other body positions needed, such as stooping, crouching and/or kneeling, for completing full head to toe physical body searches that are required. She is functioning within the sedentary to limited-light range of material handling. She was able to lift and carry up to 10 pounds occasionally and showed observable difficulty when handling 15-pound luggage during work simulation. She is limited to walking at a slower-than-average pace, with onset of an antalgic gait after approximately 5 minutes, and reduced tolerance for longer-distance walking such as from parking lots to the terminal.

...

In view of these findings, it is my opinion that Ms. Veloso's endurance for sustained work demands as a screening officer is compromised. Without the ability to meet the physical factors outlined above, and without accommodation consistent with the limitations described in this report, she would not be able to durably sustain the full range of physical factors required of an unrestricted Airport Screening Officer. Her recent ability to perform modified work has been supported by co-worker assistance, avoidance of the bagging position, working at quieter checkpoints, and her willingness to work through symptom aggravation.

Based on the physical factors of the full Airport Screening Officer role, she will likely experience symptom aggravation even with part-time work in this field. I do not believe that she meets the demands for this work on a part-time or full time basis. Her ability to sustain this work will depend on her capacity to manage and tolerate those symptoms, as well as on the amount of support she receives from her employer in terms of accommodation.

[96] Ms. Waithman concludes that Ms. Veloso's functional capacity is appropriate for part-time work in administrative or social service-related roles, provided that pacing, postural variability, and symptom-management strategies are incorporated throughout the workday. However, she notes that Ms. Veloso's current physical tolerances indicate that she may have difficulty sustaining full-time administrative work unless these accommodations are consistently available and the workload is structured to allow for frequent changes in posture and rest breaks to manage symptoms.

[97] Ms. Waithman was challenged on her opinion that Ms. Veloso was making strong efforts in her functional capacity testing. I am satisfied with Ms. Waithman's expert opinion that Ms. Veloso was making those efforts, and that the results of Ms. Waithman's functional capacity evaluation is sound.

[98] Ms. Veloso also relies on the opinion of Ms. Sharma, an expert in the area of vocational rehabilitation. Ms. Sharma's opinion is that Ms. Veloso can no longer be considered competitively employable in an unrestricted Airport Screening Officer capacity. Ms. Sharma notes that although Ms. Veloso is on a reduced schedule with weight handling accommodations, the Airport Screening Officer position is inherently non-accommodating, as the essential duties are dictated by federal security regulations and cannot be materially adjusted without compromising operational integrity or fairness among staff. Ms. Veloso's inability to rotate through all six required positions means she cannot fulfill the essential job functions and reliance on coworkers to assume her heavier tasks places her at risk of being deemed unable to meet job expectations. Ms. Sharma further opines that Ms. Veloso's recent failed CATSA infiltration test during a radicular pain flare illustrates the practical consequences of her inconsistent functional reliability in a role where even brief lapses in attention, posture, or pain control can result in operational failures; and in a regulated, safety-sensitive environment, functional unpredictability directly undermines employability.

[99] Regarding Ms. Veloso's plan to transition into the social services sector, Ms. Sharma opines that certain roles within that field are likely to still require standing, walking, community visits, or crisis-response activities that could challenge Ms. Veloso's physical tolerances. Ms. Sharma believes that it is likely Ms. Veloso will remain limited to part-time, office-based, or administrative work within the sector unless consistent accommodations, such as flexible scheduling, remote work options, reduced caseload expectations, and the ability to change positions frequently, are available. Ms. Sharma emphasizes that while Ms. Veloso's academic engagement provides a meaningful sense of direction and hope for future vocational stability, it does not offset the current limitations she faces in the labour market; her suitability for social services work will depend on the extent to which her ongoing functional limitations can be managed within real-world employment settings, and are likely still limited by both her physical and mental injuries to part-time accommodated work.

[100] In conclusion, Ms. Sharma opines:

It is my opinion that the injury-related symptoms and limitations Ms. Veloso resulting from the subject motor vehicle accident have lead to a significant narrowing of vocational opportunities and have impaired her capacity to participate in the labour market. She is no longer competitively employable in any capacity requiring typical labour-market demands, full-time hours, consistent productivity, or the ability to compete on equal footing with non-disabled applicants. She is no longer able to meet the full-time, multi-positional, safety-sensitive demands of her job as an Airport Screening Officer, nor can she pursue realistic advancement within the field. Her current part-time participation is fragile, accommodation-dependent, and reflects coping rather than true employability.

Although she is pursuing retraining in the social services sector, her transition will be slow, and many certificate- and diploma-level positions, particularly frontline, outreach, or crisis-response roles, are incompatible with her functional tolerances. Her vocational options remain narrowly restricted to part-time, sedentary, flexible roles that may not be consistently available or sustainable.

Should Ms. Veloso lose her current modified position at YVR, or should she be unable to complete her retraining in social services, she would have very limited residual employment options in the general labour market. Her functional restrictions make it unlikely that she could secure or sustain physically demanding security roles or frontline social service work. Her viable options would be largely confined to lower-wage, entry-level administrative positions requiring accommodation.

[101] Ms. Sharma recommends vocational rehabilitation counselling support in the event she is required to seek alternate employment.

[102] Ms. Sharma was also cross-examined with respect to the foundations of her opinion. Although Ms. Sharma conceded that she was not previously aware of some of the additional facts put to her in cross-examination, these did not change her opinion. I accept her opinion.

CAUSATION

[103] Causation must be established on a balance of probabilities before damages are assessed. As Chief Justice McLachlin stated in *Blackwater v. Plint*, 2005 SCC 58:

[78] ... The rules of causation consider generally whether “but for” the defendant's acts, the plaintiff's damages would have been incurred on a balance of probabilities. Even though there may be several tortious and non-

tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway: *Athey*.

[104] In *Jenkins v. Casey*, 2022 BCCA 64 at para. 75, the Court of Appeal noted that the trial judge correctly summarized the general principles of causation as follows:

- a) If the defendant's negligence is one cause of an injury, or if it exacerbates or aggravates an existing condition, then the defendant is liable for causing the resulting injury: at para. 115, citing *Athey* at para. 47.
- b) The primary test for causation asks: "but for the defendant's negligence, would the plaintiff have suffered the injury?": at para. 116, citing *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21–23.
- c) Tortfeasors must take their victims as they find them, and are liable even if the plaintiff's injuries are more severe than they would be for the average person: at para. 117, citing *Athey* at para. 34.
- d) The general principles of causation in law apply to psychological injury just as they apply to physical injury: at paras. 119–120, citing *Yoshikawa v. Yu* (1996), 21 B.C.L.R. (3d) 218 (C.A.); *Hussack v. Chilliwack School District No. 33*, 2011 BCAC 258 at para. 74.

[105] The plaintiff must be placed in the position that they would have been in if not for the defendant's negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for the average person (sometimes referred to as the "thin skull" rule). However, the defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which they would have experienced anyway (sometimes referred to as the "crumbling skull" rule): *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 32–35, 1996 CanLII 183. In *Athey*, the Supreme Court of Canada articulated the "crumbling skull" rule as follows:

[35] The so-called "crumbling skull" rule simply recognizes that the pre-existing condition was inherent in the plaintiff's "original position". The defendant need not put the plaintiff in a position better than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. The defendant is liable for the additional damage but not the pre-existing

damage Likewise, if there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award This is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendant risks and shortcomings, and not a better position.

[Emphasis in original.]

[106] “Crumbling skull” pre-existing factors may be addressed in a number of ways, including by awarding damages only for injuries not caused by the pre-existing condition, or through a percentage reduction to a damages award that reflects the likelihood that a pre-existing injury or condition would result in similar losses: see e.g., *Booth v. Gartner*, 2010 BCSC 471 at paras. 26–31; *Beardwood v. Sheppard*, 2016 BCSC 100.

[107] At common law, a new act occurring after a defendant's wrongful act may give such a pronounced new impetus or deflection to the chain of causation that the original wrongful act of the defendant is no longer a sufficient cause upon which to rest legal liability for the plaintiff's loss. This principle is known as the defence of “*novus actus interveniens*” (literally, “new intervening act”): *Yoshikawa v. Yu* (1996), 21 B.C.L.R. (3d) 318 at para. 21, 1996 CanLII 3104 (C.A.). The *novus actus interveniens* defence may be successful when the new act is of sufficient magnitude to break the chain of causation. The *novus actus interveniens* analysis is conducted as part of the proximate cause analysis so that a defendant is not held liable for objectively unforeseen consequences of their actions.

[108] The question of whether a subsequent act breaks the chain of causation is a question of fact: *Hussack v. Chilliwack School District No. 33*, 2011 BCCA 258 at paras. 87–88. Intervening events are thus treated similarly to the consideration of pre-existing conditions for the purposes of causation, in that the court must consider whether such an event would have affected the plaintiff's original position adversely in any event: *T.W.N.A. v. Canada (Ministry of Indian Affairs)*, 2003 BCCA 670 at para. 36; *Ho v. Eccles*, 2021 BCSC 244 at paras. 99–101.

Parties' Positions

[109] The plaintiff says that the Accident caused all of Ms. Veloso's current physical injuries and caused her mental injury, whether that be characterized as SSD, or GAD if it is not subsumed within a diagnosis of SSD.

[110] In addition to the expert opinion on this point, the plaintiff relies on the following evidence to support their position that the Accident was the cause of Ms. Veloso's radicular pain:

- a) Ms. Veloso testified that the radicular symptoms began soon after the Accident, with fluctuation, but always with some symptoms into the right hip, leg or glute;
- b) Samuel Ngo, Ms. Veloso's physiotherapist, noted positive indicators of radicular pain through the straight leg raise (SLR) and slump tests on October 2, 4, 11 and 29 of 2018 in the month after the Accident. He also testified that these tests were positive again after a lengthy absence of treatment;
- c) Mr. Ngo's intake form dated September 27, 2018, noted paresthesia in the right hip and symptoms going into the right hamstring in a diagram;
- d) Andy Vo, kinesiologist, indicated positive SLR tests on the right side on November 24, 2020, and May 30, 2021; and
- e) An MRI of Ms. Veloso's lumbar spine dated December 17, 2024, shows a disc and protrusion at the L5-S1, contacting the traversing right S1 nerve root.

[111] The defendant challenges the causation of the chronicity of Ms. Veloso's pain, and the onset of the radicular/nerve root symptoms shortly after the Accident.

[112] The defendant argues, based primarily on some notes in Ms. Veloso's physiotherapy clinical records, that Ms. Veloso was fully physically recovered from her injuries by December 2019 and was able to, and did, work full-time after that date.

[113] The defendant also argues that Ms. Veloso's current disability was caused by a pre-Accident disc protrusion that was identified by a radiologist in a 2013 medical scan. This was a proposition put to the medical experts at trial but not endorsed by any of them.

[114] To this, the defendant argues that Dr. Shergill could not rule out the possibility that Ms. Veloso had a bulging disc that was contacting and aggravating her S1 nerve root even before the Accident, and "could not confirm that mere contact of the nerve would in fact result in symptoms." The defendant also argues that "Dr. Shergill incorrectly interpreted Mr. Ngo's diagram and initial entries pertaining to the plaintiff's October 2018 examination." The defendant relies for this assertion on some alleged inconsistencies between Dr. Shergill's interpretation of the physiotherapist's clinical findings and notations and some of Mr. Ngo's descriptions of Ms. Veloso's symptoms on the stand.

[115] Fundamentally, the defendant argues I must reject the reliability of the clinical findings in the physiotherapy records because the relevant tests regularly performed by Ms. Veloso's physiotherapists relating to her right sided radicular symptoms "are based on the plaintiff's self report of pain" and "[s]he is not a reliable source".

[116] The defendant also argues that Dr. Cheung agreed in cross-examination that, in the absence of physical injury, significant stressors can in some people cause depression, anxiety, and/or stress and these in turn can cause worsening of SSD and physical manifestations including widespread pain. Although, Dr. Cheung was careful to distinguish this general possibility from her opinion about the cause of Ms. Veloso's chronic pain and mental health disorders, the defendant argues that neither Dr. Cheung, nor any of the other experts had the benefit of Ms. Veloso's counselling records from 2017 to 2019 and 2023 to 2025 prior to providing their diagnoses and opinions on causation.

[117] Finally, the defendant argues that Ms. Veloso's GAD and depression pre-existed the Accident, and that her current manifestation of those disorders were

caused by an incident of bullying and harassment which occurred at her workplace starting in or about 2023 and which they say continued until the end of 2025.

Determination

[118] There is no expert evidence to support the defendant's theory of causation. Instead, they ask that I depart from the expert evidence, based on some selective notations in the plaintiff's clinical records, physiotherapy records and counselling records, and an unsupported view of the plaintiff's reliability.

[119] With respect to the counselling records, all of the experts were given an opportunity to review these before their testimony, and all opined that they made no difference to their opinions. Nor did I hear anything put to Ms. Veloso (or the many other lay witnesses that defendant's counsel frequently and unnecessarily put the private information contained in these counseling records to) that undermined the factual foundations for the expert opinions provided at trial with respect to causation.

[120] With respect to the cause of Ms. Veloso's right sided radicular pain, referred to as sciatica by Dr. Cheung and Ms. Veloso, I find Dr. Shergill's opinion on causation authoritative, and informed by a full review of Ms. Veloso's clinical records, not just the selected records put to him in cross-examination which he was immediately able to place in their greater context.

[121] With respect to the radicular pain, Dr. Shergill explained the anatomical basis for his diagnosis, and how it is consistent with the earlier radiologist report put to him in cross-examination and the current MRI and the defendant's other theories. He also explained the fluctuation of radicular symptoms, noting that the natural history of radiculopathy is that it often improves with conservative management. This improvement can continue unless there is a flare-up or exacerbation, which is likely what happened in Ms. Veloso's case in 2024.

[122] Dr. Shergill did not consider Ms. Veloso's complaints of low back pain in 2013 prior to her bariatric surgery to be relevant to the causation of her current back pain or radicular symptoms, given the absence of her low back pain for several years

after her surgery and the sudden onset of new symptoms after the Accident. Nor did he consider Ms. Veloso's pre-Accident (and pre-bariatric surgery) complaint of plantar fasciitis to be relevant to her Accident-related or current injuries, and nor do I.

[123] With respect to Ms. Veloso's mental injuries, the expert evidence is consistent that her MDD was not caused by the Accident. However, the Accident, and specifically her chronic pain resulting from the Accident, is the cause her current anxiety symptoms, whether those be subsumed under a diagnosis of SSD or diagnosed as GAD.

[124] To the extent that the evidence supports that Ms. Veloso may have been vulnerable to an anxiety disorder caused or exacerbated by chronic pain, the defendant must take the plaintiff as they find her. This is supported by the evidence of all of the experts who testified before me, including Dr. Okorie. On the evidence before me, this is a thin-skull situation, not a crumbling skull one.

[125] I conclude that Ms. Veloso's physical injuries were caused by the Accident. I find that while Ms. Veloso's experience of depression, both before and after the Accident, was not caused by the Accident, it did make her more vulnerable to the cycle of chronic pain she has experienced since the Accident. Her anxiety disorder, whether diagnosed as GAD or SSD, is chronic pain related and also caused by the Accident.

[126] As the existence of a *novus actus interveniens* that breaks the chain of causation is essentially a question of fact (*Hussack* at paras. 87–88), as with any other fact the onus is on the party relying on it to prove it. The defendant has not established that the workplace harassment and bullying Ms. Veloso experienced starting in 2023 was an intervening event or that it is the true cause of Ms. Veloso's current physical or mental injuries.

PROGNOSIS

[127] Dr. Shergill stated the following regarding Ms. Veloso's prognosis:

Ms. Veloso is over 7 years post injury and continues to have chronic neck, upper, mid, and lower back pain and associated radicular right leg symptoms with associated functional limitations. The majority of improvement through natural history and rehabilitation would have been expected in the first 3-12 months post-trauma. Ms. Veloso has been compliant with treatments to date and has made some improvements over time, but her improvement has plateaued. Given the time post injury, ongoing disability, and plateau in recovery I believe she has reached Maximal Medical Improvement.

Although there are other treatment options that may result in further improvement of her symptoms ... I am guarded as to what can be reasonably expected in terms of recovery and/or response to treatment. There is no cure for chronic pain, thus, the below treatment recommendations are not likely to be curative in nature and will rather be meant to decrease pain, minimize disability, and improve function. I suspect she will continue to suffer with her current pain and associated functional, vocational, and recreational impairments for the foreseeable future. Ms. Veloso is expected to continue to have exacerbation of her symptoms with increasing physical demands.

[128] Dr. Cheung stated the following regarding prognosis on page 9 of her report:

Unfortunately, at 7 years post-MVA, Ms. Veloso's prognosis for a full recovery from the injuries is poor. The likelihood that she makes significant gains from this level of functioning is low as she has failed multiple treatment modalities and medication trials. At best, she will be able to maintain a modified work volume and hours with good supports as outlined in item 5 below and careful management of her time and energy to avoid exacerbation.

[129] Dr. Lu stated the following regarding prognosis which is tied to Ms. Veloso's chronic pain:

Ms. Veloso is and will likely remain partially disabled. The treatment outline is to prevent a deterioration to ensure she can maintain her part-time work. The uncertainty of her physical symptoms is a major limit. Her physical symptoms will continue to drive her psychiatric conditions. Based on the complexity of her physical and psychological symptoms and her biopsychosocial stressors, Ms. Veloso faces many risks of deterioration. Even in the unlikely scenario of a full remission of her SSD and major depression, she has at least a 30 percent chance of relapse within five years. She would be expected to have a rapid decline in function if she were to have any worsening of her pain.

... Her chronic pain is expected to persist, and she is expected to have chronic mood symptoms during periods of pain fluctuation. Over her lifetime, she is likely to have waxing and waning chronic pain, anxiety, and depression. It is common for patients with chronic pain and psychiatric symptoms to go for months without any treatment and then require more treatment during periods of increased pain or stress. Her lifetime psychiatric risk has been elevated compared to her risk prior to the 2018 MVA. Even if she improves, Ms. Veloso requires long-term follow-up. Further, any future

serious accidents to her or her family members would have a high likelihood of causing PTSD.

[130] I accept this evidence and find that Ms. Veloso's prospects for substantial recovery from her chronic pain and related mental health injuries is unfortunately low. Nevertheless, with a transition away from work that exacerbates her pain toward work that she finds more rewarding and more akin to her advocacy work with the Union, the prospect that her pain may be better managed is a reasonable likelihood.

NON-PECUNIARY LOSSES

[131] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188–189.

[132] In *Stapley v. Hejslet*, 2006 BCCA 34, the British Columbia Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages:

[46] The inexhaustive list of common factors cited in *Boyd [v. Harris]*, 2004 BCCA 146] that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and

- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[133] The assessment of non-pecuniary damages is necessarily influenced by the individual plaintiff's personal experiences in dealing with his or her injuries and their consequences: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[134] Ms. Veloso must be placed in the position that she would have been in if not for the defendant's negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for another person. However, the defendant need not compensate the plaintiff for any debilitating effects of a condition that the plaintiff would have experienced anyway: *Athey* at paras. 32–35.

[135] The Supreme Court of Canada in *Saadati v. Moorhead*, 2017 SCC 28 at paras. 34–36, clarified that the legal test for a compensable mental injury is no different than for finding a physical injury, in that there is no need for proof of a specific diagnosis. It is sufficient that a mental or psychological harm or injury that was caused by the accident is established on the evidence.

Plaintiff's Position

[136] Ms. Veloso seeks \$175,000 in non-pecuniary damages relying on the following cases as relevant comparators for the purposes of non-pecuniary damages:

- a) In *Hauk v. Shatzko*, 2020 BCSC 344, Justice Marchand, as he then was, found that a 54-year-old plaintiff suffered soft tissue injuries to her neck, back and shoulders, leading to headaches and disrupted sleep. Justice Marchand found that, though other factors were at play in the plaintiff's then-current level of physical dysfunction and emotional distress, including work-related stress, unrelated physical pain, ongoing cancer concerns, the needs of her aging mother and separation issues, she would have managed these stressors much better, and she would still be the same happy, healthy and

hardworking, active person she was but for the accident. Justice Marchand awarded \$150,000 in non-pecuniary damages (\$185,700 in 2026 dollars).

- b) In *Salamanca v. Khela*, 2026 BCSC 365, Justice Latimer awarded a 47-year-old mother, who had, similar to Ms. Veloso, a range of pre-accident health issues that were mostly non-symptomatic by the time of the accident, \$190,000 in non-pecuniary damages in relation to chronic pain caused by whiplash symptoms, headaches, sleep disruptions and major depressive disorder of moderate severity.
- c) In *Pearson v. Osseiran*, 2025 BCSC 1729, Justice Morishita awarded \$185,000 in non-pecuniary damages to a 35-year-old plaintiff who suffered soft tissue injuries, headaches, bicep tendinopathy and subacromial bursitis, SSD and MDD, with some prospect for improvement.

Defendant's Position

[137] The defendant says that Ms. Veloso should be awarded \$85,000 in non-pecuniary damages. The defendant acknowledges that Ms. Veloso has suffered soft tissue injuries to her neck and back, but says these injuries resolved within one to two years. The defendant's suggested comparable awards in line with their position on the limited losses caused to the plaintiff by the defendant's negligence are in the range of \$70–100,000 as follows:

- a) In *Mandra v. Lu*, 2014 BCSC 2199, the plaintiff, after involvement in an accident at the age of 53, suffered from chronic pain, including back pain, neck pain and pain in his legs, headaches, and impaired vision. Treatment and medication had not helped, and there was no prognosis for improvement except in relation to the low back pain. These injuries disabled him from his former work as a millwright as he had a hard time sitting or standing for prolonged periods and lacked the necessary physicality for the work, rendering the plaintiff only very marginally employable in light-duty occupations. His injuries affected his social life and his relationship with his

wife, and he further suffered from depression and anxiety. He was awarded \$75,000 in non-pecuniary damages (\$100,000 in 2026 dollars).

- b) *Dhillon v. Singer*, 2017 BCSC 414, concerned a 44-year-old female plaintiff who was involved in three motor vehicle accidents. She suffered soft tissue injuries to her neck, back, and shoulders, sleep disturbances, headaches, and psychological symptoms, including depression, anxiety, low energy, and issues with intimacy in her marriage. While some of her complaints had reduced by the time of trial, the Court found her symptoms were intermittent but chronic. The accidents limited her ability to engage in housework, cook, and play badminton with her children. The plaintiff was awarded \$85,000 in non-pecuniary damages (\$109,000 in 2026 dollars).
- c) In *Hatch v. Kumar*, 2013 BCSC 2049, the 49-year-old plaintiff suffered soft tissue injuries to her back and neck due to a rear end collision. Eight months after the collision, she was able to work full-time again. By the time of trial, she had some ongoing back pain that was unlikely to improve and limited her functioning, including her recreational activities and ability to do household chores. She was awarded \$50,000 in non-pecuniary damages (\$68,000 in current value).
- d) In *Amini v. Mondragaon*, 2014 BCSC 1590, the plaintiff, who was 44 years old at the time of the accident, suffered soft tissue injuries, including ongoing neck and shoulder pain. The Court found that her condition was likely to improve. She was awarded \$55,000 (\$74,000 in current value).

Determination

[138] In my view, the plaintiff's cases are the more comparable to the facts as I have found them.

[139] The evidence establishes that the Accident has had a significant impact on Ms. Veloso's quality and enjoyment of life, both with respect to her family and social life and her work life. It has limited her ability to perform the roles that she expected

of herself prior to the Accident, including maintaining a clean home and not being dependent on others for shopping and cooking. Ms. Veloso had worked hard to be an active person, able to play soccer, to go on frequent vigorous hikes, and to go out dancing with friends. The evidence establishes that where Ms. Veloso was previously a bubbly, social, energetic, extrovert always wanting to advocate for others, she is now anxious, withdrawn and more irritable. This has affected her important relationships, and her ability to represent others in her Union.

[140] Ms. Veloso's anxiety about her chronic pain, and how to avoid flare-ups of her radicular pain on her right side in particular, which occurred in late 2023 and 2024, dominates her choices and activities, and her future is uncertain because she is unsure if she can work full-time, even in her chosen field of social services.

[141] The Accident came at a particularly poor time for Ms. Veloso, when she was in her early 30s, and trying very hard to start a family. In the seven and-a-half years that have passed since the Accident, she has suffered from chronic pain symptoms despite extensive treatment, and her guarded prognosis suggests she has many years of learning to live with chronic pain ahead of her, and what appears to be a well-entrenched pain-focused anxiety disorder, whether that be SSD or GAD.

[142] I would award the plaintiff **\$175,000** in non-pecuniary damages.

LOSS OF EARNINGS AND EARNING CAPACITY

Plaintiff's Position on Past Loss of Income

[143] Ms. Veloso claims \$90,000 in net past income loss, based on a gross wage loss of \$113,050. She calculates this loss on the basis of the difference between her salary at a full-time 40-hour week, and the hours she did not work in the form of fewer shifts and shortened shifts each year, based on her doctor's notes setting out what shift accommodations she required at various times.

[144] She calculates a loss of just over \$7,000 in the first months post-Accident between September and December 2018, including the total loss of four weeks of work immediately post-Accident, and close to half-time hours for the rest of that

year. In 2019, when she was working shorter shifts with the support and recommendation of her doctor, her loss was just over \$9,505, and in 2020 and 2021 it was just over \$5,500 and \$4,400 respectively.

[145] In 2022 and 2023, Ms. Veloso's income losses were negligible as she returned to work full-time. However, in March 2024 Ms. Veloso says she was totally disabled from work again due to the flare up of her right radicular pain, only returning to work again in October 2024 with one short shift per week resulting in lost income of just under \$40,000.

[146] Her very limited work schedule continued into 2025 and 2026. Based on the collective agreement in place at the time, her losses exceeded \$41,000 in 2025 and over \$5,000 in 2026 up to the date of trial.

[147] The plaintiff acknowledges that her greatest income losses have been primarily in the last two years prior to trial, after she went on a much longer period of disability than she did after the Accident, and that she has returned to work with a much more limited number of hours than she had in the four to five years post-Accident. She says that this is because of an aggravation in her right radicular symptoms that she was unable to control after mid-2023, after more than a year of full-time work during which time she could not maintain her heavy rotation of physiotherapy treatments and other treatments and during which time she greatly over-extended herself trying to manage a full-time and physically demanding position.

[148] Ms. Veloso acknowledges that her work hours also reduced in 2024 because she returned to school full-time during this period to obtain her social services diploma. However, she says that in doing so she was mitigating her damages by training for a career that did not involve the physical demands that are beyond her functional limitations, and that she was only in school, rather than earning full-time income, because of the Accident.

Plaintiff's Position on Future Loss of Earning Capacity

[149] Ms. Veloso claims \$450,000 in future loss of earning capacity.

[150] Assuming Ms. Veloso continues to work as a screening officer, but requires her present accommodations of being limited to 18 hours of work per week, the plaintiff says her future loss of earnings would be \$33,267.52 a year (not including a loss of overtime and other Union benefits, or any pay raises or promotions that she might expect as a member of the Union, including one already approved in the latest collective agreement). Assuming a retirement age of 65, and applying the applicable multiplier from CIVJI of 20.0304, this would be a loss of \$666,362.

[151] Ms. Veloso says that a similar loss is also a reasonable possibility based on her studies to become a social worker. She is nearing the end of her diploma, and would need to study for another two years to obtain her degree. Ms. Veloso relies on the opinion of Ms. Sharma in this regard. After noting that working as a screening officer was not a viable path long-term for Ms. Veloso, Ms. Sharma opined that her disability and functional limitations, including aspects of her psychological injuries, would also significantly impact her employability in social work in particular. She opined:

Given Ms. Veloso's functional limitations and likely need to pursue only a narrow range of accommodated positions within this category, as stated earlier, she would not be competitively employable for the full range of roles in this occupation. As a result, she would be unlikely to access median or high-paying positions in this field. Instead, she would most likely be restricted to lower-wage, entry-level, part-time, or administrative variants of social service work, and would need to selectively target roles with minimal physical or emotional demands and greater flexibility, which further narrows her labour-market competitiveness and earning potential.

[152] Ms. Veloso argues that the Accident has also caused her losses in terms of her potential future earnings in the social work field. Assuming she would have become a social worker in any event (as the defendant says), or will become one in the future as a result of the Accident (as the plaintiff hopes), a reduction in her hours from full-time to part-time in this higher paying position results in an even greater financial loss than a reduction in hours at her screening officer wage. A reduction in

a social worker's hourly wage due to Accident-related functional limitations, such as an inability to work full-time sitting at a desk or to manage higher stress situations due to her anxiety and irritability, would be even greater than the losses she is incurring as a part-time accommodated screening officer. Ms. Veloso argues that the financial loss in this scenario is no less than the \$30,000 per year she is projected to lose working part-time based on her screening officer wage.

[153] The plaintiff also points to the following contingencies that suggest that Ms. Veloso's loss is even greater than \$30,000 per year, including:

- a) Ms. Veloso's chronic pain, radicular symptoms and mental health, including her SSD or GAD, may yet get worse, as they seem to have done in the last two years;
- b) If she loses her current employment, she may not be able to find another employer willing to provide adequate accommodations;
- c) If Ms. Veloso was able to continue as an airport screener her hourly wage would continue to increase, as it recently has done pursuant to a new collective agreement, which means a greater loss of income due to reduced hours; and
- d) Ms. Veloso has also lost the ability to work overtime which she sometimes did prior to the Accident.

[154] Against this, the plaintiff agrees that she may also be able to find more suitable employment, find an accommodating employer and earn just as much or more than her current employment, or be able to work more than part-time in the future. However, the plaintiff says that the contingencies that tend to drive her losses up are more likely than the contingencies that might ameliorate those losses.

[155] Overall, Ms. Veloso says that a \$600,000 estimate of her future earning capacity losses is a fair one, and that she would apply a 25 percent reduction to

those losses to address the 1.5 percent mandatory adjustment for future pecuniary award losses, and all negative labour market or other contingencies.

Defendant's Position

[156] The defendant submits that Ms. Veloso was able to return to work full-time within one to two years of the Accident and suffered no pecuniary losses beyond that point. They argue that her past loss of income award should be \$14,000 on this basis.

[157] In the alternative, if I were to find that Ms. Veloso was disabled from working full-time until her formal return to full-time work in 2022, they say that the plaintiff's loss is no more than \$46,000.

[158] The defendant says there should be no award for future loss of earning capacity. If, however, I were to make such an award, the defendant argues that a capital asset approach should be used to provide a "rough and ready" award as set out in *Pallos v. Insurance Co. of British Columbia* (1995), 100 B.C.L.R. (2d) 260, 1995 CanLII 2871 (C.A.), which in this case would mean using one to two years of her highest post-Accident reported income, being 2022, which would result in an award in the range of \$59,000–\$118,000.

[159] With respect to the plaintiff's position which posits a loss of \$30,000 per year, the defendant suggests a discount of 20 percent in this case "for the contingency that the assumptions on which the award for pecuniary loss is predicated may prove inaccurate", relying on *Wood v. Kim*, 2023 BCCA 156 and on *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 59 [*Ploskon*]. In *Wood*, the Court of Appeal decreased a future earnings award by 15 percent, in addition to the mandatory 1.5 percent discount, to reflect both the real and substantial possibility that Ms. Kim could work at a more physically demanding job following treatment or could obtain a higher paying sedentary position even if her physical condition remained the same: at para. 17. In *Ploskon*, the Court of Appeal added a 20 percent discount on top of other discounts to reflect negative conventional contingencies: at para. 59.

[160] The defendant notes a number of contingencies which he says warrant a deduction to any future earnings award, including:

- a) The plaintiff may improve over time, particularly if or when the impact of her life stressors abates, as regards their role in her reduced functioning;
- b) The plaintiff is likely to pursue further education, a reflection of her pre-Accident intentions, requiring additional years away from employment;
- c) The plaintiff is in pursuit of social work employment that is of a less physically demanding nature, allowing for the prospect of increased working hours and commensurate earnings; and/or
- d) The plaintiff's pre-existing back issues and issues with anxiety and depression, and the strenuous nature of the plaintiff's work as a screener (assuming I find such pre-existing conditions) would have increased the likelihood of the plaintiff retiring at an earlier age.

[161] The defendant also argues that a 50 percent deduction in any future loss of earnings award is warranted on the basis that Ms. Veloso is likely to leave her union position as a screener and pursue social work instead.

Determination

[162] Plaintiffs are entitled to recover damages for their loss of earning capacity caused by the tortious acts of a defendant. Compensation for past loss of earning capacity must be based on what the plaintiff would have, not could have, earned had the injury not occurred: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.

[163] The plaintiff need not establish an earnings loss on a balance of probabilities, since what would have happened between the date of the accident and the date of the trial is essentially hypothetical, as are predictions regarding future losses. As the Court of Appeal stated in *Smith v. Knudsen*, 2004 BCCA 613:

[29] ... What would have happened in the past but for the injury is no more “knowable” than what will happen in the future and therefore it is appropriate to assess the likelihood of hypothetical and future events rather than applying the balance of probabilities test that is applied with respect to past actual events.

A hypothetical possibility will be considered as long as it is a real and substantial possibility and not mere speculation: *Morlan v. Barrett*, 2012 BCCA 66 at para. 38, citing *Athey* at para. 27.

[164] The Court of Appeal in *Rab v. Prescott*, 2021 BCCA 345 at para. 47, set out a three-step process to assess damages for future loss of earning capacity, which I find equally helpful (with some modification) for the hypothetical exercise I must also engage in to consider past losses. Those factors are as follows:

- a) Does the evidence disclose a hypothetical event that could have given rise to a loss of capacity?
- b) Is there a real and substantial possibility that the hypothetical event would have caused a pecuniary loss to the plaintiff?
- c) What is the value of that possible loss, given the relative likelihood of it having occurred?

[165] Where the plaintiff has already suffered a loss of earnings caused by the defendant’s negligence, the answer to the first two questions is generally more apparent. I find that is the case here.

[166] Finally, once the court determines the relative likelihood of the possible loss, the court must then also review the overall fairness and reasonableness of the award: *Lo v. Vos*, 2021 BCCA 421 at para. 117.

[167] I find that the first two steps set out in *Rab* have been met, with respect to both Ms. Veloso’s past and future loss of earning capacity. I find Ms. Veloso has worked less than full-time as a result of the injuries she sustained in the Accident, both in the years after the Accident, and since 2024 when she again went on

medical leave due to a significant flare-up in her pain and radicular symptoms. Her reduction in hours to date has given rise to a financial loss. This leaves the issue of the relative likelihoods of various events, and of quantification of these losses.

[168] In *Ploskon* the Court of Appeal identified the two valuation methods at the third step:

[16] ... depending on the circumstances, the third and final step—valuation—may involve either the “earnings approach” or the “capital asset approach”: *Perren* at para. 32. The earnings approach is often appropriate where there is an identifiable loss of income at the time of trial, that is, the first set of cases described above. Often, this occurs when a plaintiff has an established work history and a clear career trajectory.

[17] Where there has been no loss of income at the time of trial, as here, courts should generally undertake the capital asset approach. This approach reflects the fact that in cases such as these, it is not a loss of earnings the plaintiff has suffered, but rather a loss of earning capacity, a capital asset: *Brown* at para. 9. Furthermore, the capital asset approach is particularly helpful when a plaintiff has yet to establish a settled career path, as it allays the risk of under compensation by creating a more holistic picture of a plaintiff’s potential future.

[169] The capital asset approach is not an assessment ‘at large,’ and the court will use mathematical anchors wherever possible: *Bolognese v. Phan*, 2022 BCSC 1734 at para. 127, citing *Knapp v. O’Neill*, 2017 YKCA 10 at para. 17. In this case, where there is an established pattern of a loss of earnings and earning capacity that has continued to the date of trial, I do not consider that the capital asset approach is the appropriate one.

[170] Ms. Veloso returned to work as an airport security screener (including part-time Union office work starting in 2020) after the Accident and pushed herself to work as many hours as she could manage. The evidence establishes that she did so in the years after the Accident, with medically recommended accommodations and reduced hours, and that her work aggravated her pain throughout this period, despite attending regular and extensive therapies, both passive and active. In my view, she is entitled to recover from the defendant the earnings lost due to the reductions in her shift work in these years.

[171] Her losses up to 2022 were less than \$20,000 by any calculation.

[172] In 2022, Ms. Veloso returned to full-time work due to financial need after her divorce, and her earnings losses decreased to close to nil, though she was using up her vacation and sick time to recover from an increase in pain symptoms following her full-time return to work.

[173] Her election to a Union position, allowing two days of administrative work a week, decreased the physical demands of a full-time position during portions of this period. However, the evidence establishes that Ms. Veloso could not sustain full-time hours without frequent flaring of symptoms and a significant limitation on activities in her life outside of work. Ultimately, I find that Ms. Veloso experienced a flare up and significant deterioration in her pain in early 2024 related to her right-sided radicular pain, resulting in total physical disability to perform her work for six months, and medically-supported limitations on her ability to work more than 18 hours a week as an airport screener beyond those six months.

[174] As at the time of trial, the evidence before me establishes that Ms. Veloso cannot meet the physical demands of her work, even on a part-time basis, without considerable exacerbation of her Accident-related pain. It also establishes that while Ms. Veloso is better suited to a less physically-demanding job, such as working in an office setting as she had when elected to her Union position, she also has limitations on her ability to sit for any length of time, and she will need flexibility and accommodations even in an office setting. There is a substantial possibility that she will be limited to part-time work even in such an office setting due to her need for flexible physical positioning, and that her anxiety symptoms and chronic pain-related irritability will make her less suitable or successful in her new chosen field of social work. In this regard, I accept Ms. Sharma's opinion regarding the mentally and emotionally taxing nature of that work, and the risks Ms. Veloso faces in that field given both her physical and psychological injuries.

Past Loss

[175] I find that the plaintiff's calculation of past losses of \$113,047.94 gross from regular wages, to be established by the evidence. As such, her suggested net loss, after taxes, of **\$90,000** is an appropriate assessment of her losses in this regard.

[176] In accepting this figure, I am aware that Ms. Veloso is being compensated for time away from earning an income that she used to retrain for a social service diploma. I am satisfied on the evidence, however, that this was a reasonable way for Ms. Veloso to mitigate her losses because, even though she was able to sustain her screening officer job for over five years post-Accident, she only did so with extensive regular therapies, unresolved chronic pain, and significant curtailment and compromises to her life outside of work. Her attempt to work full time in 2022 and 2023 led to a disabling exacerbation of her of radicular pain that reduced her ability to work even at the part-time levels she had worked in the years after the Accident. The evidence, including her functional capacity evaluation performed by an expert familiar with the specific demands of airport screening officers, establishes that continuing in this role is unsustainable given her Accident-related injuries.

[177] I am not convinced that she would have left this secure Union position in any event of the Accident, as argued by the defendant. While she may have had a longstanding desire to become a paralegal even before the Accident, her struggles to get good marks in English, which continue to trial, would not have made this a substantial likelihood. She made no attempts to make this move prior to the Accident, or for many years after the Accident, until she found herself disabled from standing for more than an hour due to her radicular pain.

[178] Nor do I consider it a reasonable possibility that she would have been able to work full-time in September 2024 even had she not begun full-time schooling given how long it has taken her to work up to an 18-hour work week and the struggles she continues to have with those hours.

[179] Overall, I would award Ms. Veloso **\$90,000** for her past loss of income.

Future Loss

[180] In terms of Ms. Veloso's future loss of earning capacity, I have already found that the Accident has, and continues to, cause her pecuniary loss in terms of her ability to earn income as a screening officer.

[181] The substantial possibilities established on the evidence include that she could continue as a screening officer but in her currently part-time and accommodated position, or that she could work in the area of social services.

[182] I agree with Ms. Veloso that her current financial losses working part-time in her current position are approximately \$30,000 per year. Given that this is a unionized position with strong job security and other non-wage benefits (including pension contributions), and a history of regular wage increases pursuant to the various collective bargaining agreements in place, I find that the negative labour market contingencies for Ms. Veloso's future in that position are relatively low, and that there are many positive contingencies that would offset the negative ones. This includes the positive contingency that Ms. Veloso may recover from her chronic pain condition. The plaintiff's proposed 25 percent reduction for those contingencies to a retirement age of 65, which I consider to be more than fair.

[183] I agree with the plaintiff that if Ms. Veloso is able to transition to social services work, while her wages may go up, so would her losses in terms of the difference between what she could be expected to make in a full-time position, even a managerial position, and what she is likely to manage with her physical and psychological limitations, which is some level of part-time employment. If she were to pursue the higher end of social work positions, she would require another two years of schooling at least, during which time she will also have a significantly reduced ability to work. If she were to attend schooling part-time, she would also be limited in the hours she could work and the income she could earn for more than a two-year period. Those losses are also attributable to Ms. Veloso's Accident-related injuries. While this is a substantial possibility, it would not lessen the defendant's liability for future loss.

[184] Overall, I consider the plaintiff's claim of **\$450,000** in future losses a fair one that best reflects the substantial possibilities relating to Ms. Veloso's future losses, and their relative likelihood and quantification, and I would make that award.

COST OF FUTURE CARE

Legal Principles

[185] The purpose of a cost of future care award is to provide for assistance, equipment, and facilities directly related to the injuries: see *Kallstrom v. Yip*, 2016 BCSC 829 at para. 429. As stated in *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at 78, 1985 CanLII 179 (S.C.), aff'd 49 B.C.L.R. (2d) 99 (C.A.), the primary focus of the cost of future care inquiry is the provision of adequate future care. "The award for future care is based on what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff": *Milina* at 78. There must be some evidentiary link between the medical assessments and recommended treatment: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 39.

[186] The extent, if any, to which a cost of future care award should be adjusted for contingencies depends on the facts: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 253. An assessment of damages for cost of future care is not a precise accounting exercise: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21. Rather, in assessing damages, the court does the best that it can based on the evidence before it.

Plaintiff's Position

[187] Dr. Shergill makes the following recommendations for Ms. Veloso's future care:

- a) A workplace (office and home office) ergonomic assessment by an occupational therapist;
- b) A sit to stand desk;

- c) Use of pacing strategies such as frequent minibreaks to recover from workplace stressors;
- d) 150 minutes of moderate to vigorous physical activity per week with a combination of aerobic and resistance exercises;
- e) An active rehabilitation program;
- f) Use of passive therapy on an as needed basis for periodic flares;
- g) Pain specialized psychotherapy;
- h) Cognitive behavioural therapy;
- i) Chronic pain education;
- j) A switch from Gabapentin to Pregabalin and up-titrating as tolerated;
- k) A referral to an interventional physiatrist for consideration of a trial of ultrasound-guided trigger point injections to the affected cervical and thoracic regional muscles;
- l) A referral to an interventional physiatrist for consideration of a fluoroscopic guided right L5-S1 transforaminal epidural steroid injection; and
- m) A referral to an interventional physiatrist for diagnostic fluoroscopic-guided bilateral L4 medial branch blocks and L5 dorsal ramus blocks.

[188] The plaintiff also relies on a number of recommendations by Dr. Lu, including:

- a) Enrollment in a structured pain program;
- b) Vocational support; and
- c) Personal training.

[189] Ms. Waithman drew on these recommendations in providing quantification of these future care costs, and also made a number of specific recommendations in relation to these general heads, including:

- a) Psychological support related to her mood and pain coping strategies;
- b) Intervention by an occupational therapist;
- c) 24 physiotherapy sessions in the first year, followed by ongoing 12 sessions annually;
- d) Twice annual kinesiology sessions;
- e) 12 sessions annually of massage therapy;
- f) Housekeeping support; and
- g) Various types of equipment to help reduce/manage pain.

[190] Ms. Waithman summarized her cost of future care recommendations in Appendix C to her report. The relevant items are summarized below with present value calculations where applicable.

ITEM	ANNUAL COST	PRESENT VALUE
Gabapentin*	\$76	\$1,359
Wellbutrin *	\$155	\$2,772
Extra Strength Tylenol*	\$16	\$286
Counselling	\$2,400 initial and \$2,000 for 3 further blocks	\$8,400
Occupational Therapy	\$5,430	\$5,430
Initial Physiotherapy	\$3,600— <i>something more intensive to work with OT?</i>	\$3,600
Annual physiotherapy*	\$1,800	\$30,393
Kinesiology*	\$160	\$2,861
Vocational Rehabilitation	\$2,000 with 1 to 2 replacements	\$5,900
Massage*	\$1,740	\$31,119

Initial Year of Housekeeping	\$8,000	\$8,000
Annual Housekeeping from Year 2*	\$6,000	\$101,310
Seasonal Housekeeping*	\$320	\$5,723
Ergonomic Equipment	\$2,900 replaced every 3 to 10 years	\$9,000
Total		\$216,153

* age 65, multiplier of 17.885

Defendant's Position

[191] The defendant says that Ms. Veloso has no need for costs of future care arising from the Accident and that all her current disabilities stem from the bullying and harassment she experienced at work.

[192] In the alternative, the defendant says that Ms. Waithman's evidence of what supports would assist Ms. Veloso in the future are overstated, and a number of these items can be done at low or little cost, including the following costs that are not covered by MSP:

- a) Wellbutrin: The defendant submits that this reflects a pre-Accident diagnosis of depression and anxiety and is not reasonably attributable to the Accident.
- b) Psychology/counselling: The defendant submits that the plaintiff was already reliant on these services for a wide array of non-Accident related issues, many of which pre-dated the Accident or arose with the 2023–2024 incident.
- c) Occupational therapy: The defendant submits that the ChangePain clinic, which is free, is perfectly appropriate for assisting the plaintiff with "pain management strategies" as this item is put forward for.
- d) Physiotherapy and kinesiology: The defendant submits that these expenses initially flowed from the Accident, but were interrupted by the intervening event of the 2023–2024 incident. Further, the initial allowance of 24 sessions

of physiotherapy for a year is excessive and exceeds the rate at which she attended physiotherapy in 2025.

- e) Vocational rehabilitation assessment: The defendant submits that the plaintiff herself has effectively determined the best and most appropriate path for a successful new career that can accommodate her needs, and as such this is a superfluous cost.
- f) Massage therapy: The defendant argues that Dr. Lu recommended against passive therapies in favour of an emphasis on active therapies and that the plaintiff has already expressed not having enough time in the day to attend a wide multitude of appointments.
- g) Housekeeping: The defendant suggests that this item is not warranted because the evidence shows, in their submission, that by mid-2020 the plaintiff was handling her activities of daily living and chores, albeit with pacing, and that by 2022 she was separated from her husband and living on her own, handling her own chores, before moving in with Mr. Chia who contributes fairly to the chores, with the two balancing their respective health needs in the conduct of those chores.
- h) Equipment and supplies: The defendant submits that the recommendations at page 23 of Ms. Waithman's report are wildly at odds with the reality of the plaintiff, who remains active in her rehabilitation, her work, her school, and her social life. He further submits that the plaintiff's needs are not reflected in these items.

[193] Overall, the defendants say no more than an award of \$25–35,000 is appropriate under this head.

Determination

[194] The defendant's arguments in this regard are not supported by the evidence or my findings with respect to causation. The defendant's own expert, Dr. Okorie,

also recommended counselling and occupational therapy. Generally, I find the plaintiff's claim for cost of future care is supported by the evidence.

[195] The two exceptions I would make to this finding is the cost of massage therapy on an annual and ongoing basis, and the full cost of annual housekeeping sought. I accept Ms. Veloso's evidence that her capacity for housework has significantly declined, and that prior to the Accident she regularly performed deep cleaning tasks, including scrubbing bathtubs, washing carpets, and cleaning baseboards. Since the Accident, these tasks were not completed unless she was helped by others, and Mr. Chia now contributes to these tasks. Even though the cost of annual housekeeping claimed has already been reduced by 50 percent to address Mr. Chia's contribution towards cleaning the house, an award of \$6,000 per year to the age of 65 for housekeeping is on the high side, in my view. I would reduce this by a further 50 percent.

[196] I would also reduce the costs of massage by 50 percent as this treatment is only recommended for pain flare-ups as needed.

[197] Overall, I would award Ms. Veloso **\$150,000** in costs of future care.

SPECIAL DAMAGES

[198] The parties have agreed to special damages in the amount of **\$14,458**.

CONCLUSION

[199] In conclusion, Ms. Veloso is entitled to **\$879,458** in damages, as follows:

a.	Non-pecuniary Damages	\$175,000
b.	Past Loss of Income/Earning Capacity	\$90,000
c.	Loss of Future Earning Capacity	\$450,000
d.	Special Damages	\$14,458
e.	Cost of Future Care	<u>\$150,000</u>
	Total	\$879,458

[200] Ms. Veloso is presumptively entitled to her costs at the ordinary scale and court ordered interest. If the parties wish to address me on costs, they may make a request to appear before me for this purpose within 30 days of receipt of these reasons.

“Marzari J.”